SUPREME COURT, U.S.
MAR 29 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 1049, October Term, 1966.

NORMAN F. DACEY, ET AL,

Appellants

vs.

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,

Appellee

On Appeal From The Supreme Court Of The State Of Connecticut.

APPELLANTS' BRIEF ON MOTION TO DISMISS.

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THE APPEAL RAISES SUBSTANTIAL FEDERAL QUESTIONS.

I.

SECTION 51-88 OF THE GENERAL STATUTES OF CONNECTICUT VIOLATES THE "DUE PROCESS" CLAUSE OF THE FOURTEENTH AMENDMENT.

The issues in this case are nationwide in scope and effect. The appellant, not to mention a multitude of others in fields closely related to law (e.g., real estate, accounting, insurance, etc., to mention a few) are entitled to a clear answer to them.

The genesis of appellee's contention that § 51-88 of the General Statutes of Connecticut does not violate the due process clause is that

> "within the context of common usage and judicial interpretation by the courts of Connecticut . . . § 51-88 of the Connecticut General Statutes . . . is sufficiently clear and conveys adequate warning to men of ordinary intelligence of the area of conduct to be proscribed."[1]

Appellee then states (Motion, page 8) that "this Court must examine the statute in the context of

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[1]Appellee's Motion to Dismiss Under Rule 16 (hereinafter referred to as "Motion") page 7.

well-defined usage and state court construction" to determine whether the statute gives adequate notice of the conduct it seeks to prohibit.

In construing § 51-88 the Supreme Court of Connecticut has held that an all-inclusive definition of the phrase "practice of law" is difficult, if not impossible, of formulation. **Grievance Committee v. Dacey,** 154 Conn. 129, 147; **Grievance Committee v. Payne,** 128 Conn. 325, 329. The attitude of the courts of Connecticut when faced with a case involving the alleged unauthorized practice of law is painfully obvious — they intend to make an **ad hoc** determination of each case. As stated in **Grievance Committee v. Payne, supra** at 329:

> "The more practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term [practice of law]."

Such an approach may very well be the most practical approach. But the statute under which such an approach has been adopted clearly fails "to inform those who are subject to it what conduct on their part will render them liable to its penalties." **Lanzetta v. New Jersey,** 306 U.S. 451, 453; **Connally v. General Construction Co.,** 269 U.S. 385, 391.

Such an **ad hoc** approach is further proof of the fact that the Connecticut courts themselves do not know the scope or breadth of § 51-88. Thus how can the courts expect mere "men of ordinary intelligence" to know what conduct § 51-88 prohibits when

the courts themselves lack this knowledge in advance of its specific application.

Appellee argues that under any construction of § 51-88 appellant clearly and knowingly violated the statute. Appellant, both before the Superior Court and the Supreme Court of Connecticut, argued that for out-of-court conduct to violate the statute, such conduct must be carried on as a "business." **Grievance Committee v. Dacey**, 154 Conn. 129, 136. The Connecticut Supreme Court itself admitted that on its face, and on the face of § 51-88, such a claim "seemed to have some merit." **Ibid.** The Court examined at great length the entire legislative history of what is now § 51-88 (**Id.** at 136-140) before ultimately concluding that the mere "practice of law" violated the statute, even though not carried on as a business. **Id.** at 140.[2]

How appellee can here contend that appellant's conduct "clearly violated § 51-88" and that appellant knew that his conduct violated the statute, when the Court had to go to great lengh before ulimately reaching this conclusion is beyond comprehension. Or would appellee contend that appellant has a greater insight into the meaning of § 51-88 than does the highest court in Connecticut?

Appellee further argues that since it gave appel-

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[2]The Court stated, at page 140:

> "Whether he [appellant Dacey] also could be said to have made it a 'business to practice law' need not, on the facts of this case, be determined."

lant "warning" that his conduct violated § 51-88, appellant had notice that his conduct was illegal. However, who, we might ask, ever appointed appellee as interpreter of the phrase "practice of law"? Appellee loses sight of the fact that it is the statute itself which must warn appellant of what conduct on his part will render him liable to its penalties, not a warning given to him by the grievance committee, even assuming any "warning" was given by anyone, a fact of which there is no evidence and which appellant seriously disputes. And this warning the statute fails to give.

The issue is not whether or not appellant's activities might be considered to be the "practice of law" under a more explicit statute. The issue is whether or not appellant and persons similarly situated in any one of the fields of endeavor closely related to the law, are entitled to know in advance what conduct on their part will render them liable to penalties imposed under the statute. And if they are so entitled to know, does § 51-88 so advise them.

It is these questions which, appellant submits, are federally substantial and which should be ruled upon by the Court.

II.

THE SCOPE OF THE INJUNCTION ABRIDGES APPELLANT'S RIGHT OF FREE SPEECH.

Th main thrust of appellee's argument relative to this issue is stated on page 12 of its Motion to Dismiss:

"The injunction issued by the court below embraces only acts which fall within the prohibition of § 51-88."

If the limits of the injunction are the limits of § 51-88, then the injunction is of even greater breadth than appellant imagined. For it would then have no bounds and would be as defective as the statute itself.

The issue is whether or not the injunction is so vague that its scope could extend to activities which are protected under the First Amendment. Appellant has never claimed that merely becasue an activity involves an act of speech it is protected by the First Amendment. Appellant does argue that an injunction which prohibits him from lecturing over radio or television or in person, which prohibits him from writing books or from conducting forums, does violate the First Amendment.

It is submitted that the potential scope of the injunction could easily be extended this far. Whether the injunction is in fact this broad is not of prime importance. What is of prime importance is the fact that appellant, because of the vagueness and potential scope of the injunction is faced with the dilemma of either remaining silent or speaking at his peril.

Merely because this case involves the unauthorized practice of law, does the court have the right to effectively silence a person by issuing a vague and overbroad injunction? Appellant submits that the court does not have this right.

III.

CONCLUSION.

Appellant submits that this appeal raises substantial federal questions both as to the constitutionality of § 51-88 of the General Statutes of Connecticut and as to the scope of the injunction, issues which have not been passed upon previously by any court. They have a far-reaching effect on many persons in occupations and professions which are closely related to the law. They are questions the answers to which appellant is entitled.

Respectfully Submitted,

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March 27, 1967.